

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

**CIVIL NO. 1:04CV96
(1:00CR13)**

LAMAR SHAW,)	
)	
Petitioner,)	
)	
Vs.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

THIS MATTER is before the Court on the Petitioner's motion for an extension of time in which to file his request for a certificate of appealability. The motion is denied.

On May 24, 2004, the Petitioner, through counsel, filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. On April 18, 2006, the undersigned dismissed all of Petitioner's claims contained in his § 2255 motion. According to the docket record, Petitioner's attorney received a copy of the Court's Memorandum and Order and Judgment by electronic transmission on April 18, 2006. Implicit in the Petitioner's instant motion is the acknowledgment that he, too,

received the Court's Judgment on April 24, 2006. **Petitioner's Motion, ¶ 3** ("I received my response for my motion 2255 on April 24, 2006[.]").

No appeal was filed from the Court's Judgment.

An appeal may not be taken to the court of appeals from the denial of a motion pursuant to 28 U.S.C. § 2255 unless a certificate of appealability has been issued. **28 U.S.C. § 2253(c)(1)(B)**. The time for filing a notice of appeal has long expired and this Court is without jurisdiction to extend the time for appeal or reopen the time to file an appeal. **See Fed. R. App. P. 4(a)(5), (6)**. Therefore, the Petitioner's motion for an extension of time to file for a certificate of appealability is moot.

IT IS, THEREFORE, ORDERED that the Petitioner's motion for an extension of time to file a request for a certificate of appealability is **DENIED** as moot.

Signed: May 17, 2007



Lacy H. Thornburg
United States District Judge

